

HHD-CV-19-5059848	:	SUPERIOR COURT:
KRISTEN A. FESTA AND	:	
BRIAN D. FESTA PPA A.F.	:	JUDICIAL DISTRICT OF HARTFORD
<i>Plaintiffs,</i>	:	
	:	AT HARTFORD
vs.	:	
STATE OF CONNECTICUT	:	
DEPARTMENT OF PUBLIC HEALTH,	:	
<i>Defendant.</i>	:	AUGUST 28, 2019

PLAINTIFF’S EXPARTE MOTION FOR TEMPORARY EX PARTE INJUNCTION

The Plaintiffs, Kristen and Brian Festa, hereby move for an ex parte temporary injunction pursuant to General Statutes §52-471, ordering the Defendant, State of Connecticut Department of Public Health, to refrain from issuing any school-level immunization information for the 2018-19 school year. In support of this motion, the Plaintiffs state as follows:

1. The Plaintiff believes that the Defendant plans to release the 2018-19 school-level immunization data as soon as August 29, 2019.
2. The Plaintiff bases this belief on a statement released by Governor Ned Lamont on August 28, 2019, who stated,

The Department of Public Health will be releasing vaccination data relating to herd immunity and religious exemptions this week. Further, when the school-by-school immunization data has been verified for accuracy, it will be released. The Governor believes strongly that this is important information for the public and policy makers to have at their disposal.

(Governor’s Statement attached hereto as Exhibit A)

Procedural History

3. On May 31, 2019, the Plaintiffs filed an application for a temporary ex parte injunction enjoining the Defendant from continuing to make publicly available any immunization

information collected by the department as described in Reg. Conn. State Agencies § 10-204a-4, and from releasing any additional immunization information.

4. On June 4, 2019, the Plaintiffs served upon the Defendant a motion for declaratory judgment seeking that the Court:
 - a. Issue an order declaring that the Defendants have violated Reg. Conn. State Agencies § 10-204a-4(c);
 - b. Order the Defendants to remove the confidential immunization information from their website and any other publicly-available sources;
 - c. Enjoin the Defendants from releasing any further immunization information in violation of Reg. Conn. State Agencies § 10-204a-4(c) ...
5. On June 26, 2019, the Plaintiffs filed an amended motion for declaratory judgment, seeking the same relief prayed for in the original June 4, 2019 motion for declaratory judgment. (DE #106).
6. On July 15, 2019, Plaintiffs and Defendant appeared at a hearing before the Honorable Judge Susan Quinn Cobb. At that hearing, the Plaintiffs requested that the Court issue a temporary injunction prohibiting the Defendant from releasing any further immunization information, and an order requiring the Defendant to remove the existing immunization information. The Court asked Defendant's counsel whether he would consent to not publish any further information and remove existing information from Defendant's website. Defendant's counsel replied that the Defendant had "no plans" to release any additional information within the next 30 days but refused to consent to remove any existing information from the website. Judge Quinn Cobb denied the Plaintiffs' requests, but advised the Plaintiffs, "...if you're in more of a hurry, want things done quicker, then I would recommend you file a

memorandum in opposition to the motion to dismiss quicker than thirty days, then I can resolve it quicker, then we can go to the merits, but that's up to you." (Transcript is attached hereto as Exhibit B)

7. On July 15, 2019, this Court issued an order granting the Plaintiffs until August 14, 2019 to file an opposition to the Defendant's Motion to Dismiss and giving the Defendants until August 28, 2019 to file a reply to the Plaintiffs' opposition.
8. On August 14, 2019, the Plaintiffs file an objection to the Defendant's Motion to Dismiss, along with an accompanying reply memorandum.
9. On August 16, 2019, the Defendant filed a motion for extension of time to file a reply memorandum in response to the Plaintiffs' objection to the motion to dismiss.
10. The Defendant's August 16, 2019 motion was calendared for the Short Calendar of September 3, 2019. To date, the Court has not granted the Defendant's motion for extension of time.

Applicable Law and Analysis

11. "Any judge of any court of equitable jurisdiction may, on motion, grant and enforce a writ of injunction, according to the course of proceedings in equity, in any action for equitable relief when the relief is properly demandable, returnable to any court, when the court is not in session. Upon granting of the writ, the writ shall be of force until the sitting of the court and its further order thereon unless sooner lawfully dissolved." Conn. Gen. Stats. § 52- 471(a) (2017).
12. A party seeking injunctive relief must prove that there (1) is no adequate remedy at law; (2) they will suffer irreparable harm without an injunction; (3) they will likely prevail on the merits; and (4) the balance of the equities tips in its favor. *Aqleh v. Cadle Rock Joint Venture*

II, L.P., 299 Conn. 84, 97-98 (2010) citing *Waterbury Teachers Ass'n v. Freedom in Information Commission*, 230 Conn. 441, 446 (1994).

13. The Plaintiffs will suffer irreparable harm upon the release of the information of those choosing to be exempt from the vaccination requirement in that the publication of this information by the State creates a link that can be accessed by the public. Once information summarizing my confidential medical information is published, the public can download this information and keep a permanent record regarding my confidential, medical information.
14. If the court deems the information in Connecticut statutes and Department of Public Health Regulations to be confidential then publication of the medical information of the Plaintiffs cannot be rescinded and thus will result in irreparable, permanent damage by way of making such confidential medical information public.
15. Society has attached a stigma to individual who have made a conscious choice not to vaccinate their kids. In fact, there is even a word for these people, we call them "Antivaxxers". This label carries with it a generalization that these kids are sick, carry diseases and should not be allowed in public places such as school, daycare, playgrounds or pools. Despite the fact these children do not carry diseases, they, and their parents are treated like pariahs in their own community.
16. Even Counsel for the Plaintiffs has received criticism for representing them has been labeled and treated with disdain by people she has never met.
17. There is no adequate remedy at law because no statute exists that would punish the Defendants for their willful misconduct and for the publication of private, medical information for the public to see. Since there is not taking back this action once it has been done, here once the information has been published, it is imperative that the judge restrict the

Defendant from publishing the information that is currently before the Court upon Plaintiffs' Motion for Declaratory Judgment.

18. The potential publication of information is a violation of the separation of powers.
19. The Plaintiffs believe they will likely prevail on the merits because:
 - a. Plaintiffs exhausted all administrative remedies by submitting a letter to the Commissioner of the Department of Public Health (hereinafter DPH);
 - b. Under DPH regulations the medical information submitted by parents was supposed to be confidential;
 - c. Defendants submitted a bill to the Connecticut legislature asking for the General Assembly to allow them to publish the percentages of kids that are unvaccinated, thus resulting in an admission by a party opponent.
20. On August 27, 2019, the Defendant's Commissioner, Renee Coleman-Mitchell, released a public statement announcing that she had decided not to publicly release the 2018-19 school-level immunization information. In the same statement, Commissioner Coleman-Mitchell declared an end to the state's measles outbreak and referred to this as a reason for deciding not to release the data. (Newspaper Article is attached hereto as Exhibit C)
21. As a result of the previous bill submitted by the legislature, coupled with statements made by the DPH Commissioner that no emergency exists it is the position of the Plaintiffs that the balance of the equities tips in its favor.
22. As an order enjoining the release of the 2018-19 school-level data is a central remedy sought in the present action, irreparable harm will flow to the Plaintiffs if a temporary injunction preventing the release of this information is not issued by this Court.

23. The Plaintiffs seek this injunction at this time only with regard to the 2018-19 school-level immunization information, and only until such time as this Court has had the opportunity to fully hear the parties' arguments and render its decision.

24. It is improper for the Defendant or the Governor to order the release of this information with the full knowledge that this issue is at the heart of this lawsuit, which has received much public attention. The Plaintiffs feel that such action would be disrespectful to this Court and to the doctrine of the separation of powers central to our state and federal Constitutions.

25. Plaintiffs have hereby given notice pursuant to General Statutes §52-473.

WHEREFORE, the Plaintiffs request that this Court issue a temporary injunction enjoining the Defendant from releasing any 2018-19 school-level immunization information, as described in Reg. Conn. State Agencies § 10-204a-4(c), during the pendency of this litigation.

PLAINTIFFS,

/s/ 420948

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CERTIFICATION

I certify that a copy of the above **PLAINTIFF'S EX PARTE MOTION FOR TEMPORARY EX PARTE INJUNCTION** was electronically delivered on this 28th, day of August, 2019 to Darren Cunningham, Esq., Assistant Attorney General Office of the Attorney General VIA EMAIL ONLY at darren.cunningham@ct.gov.

PLAINTIFFS,

/s/ 420948

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PROPOSED WAIVER OF BOND

Pursuant to Conn. Gen. Stat. § 52-472, the Plaintiffs request that the Court waive bond for the applicant for good cause shown, viz., the Defendant will not suffer any pecuniary harm pending the resolution of this action. Furthermore, the Plaintiffs have very limited financial resources.

WHEREFORE, the Plaintiffs seek an order from this Court for a temporary injunction, enjoining, prohibiting and restraining the Defendant State of Connecticut Department of Public Health from releasing any 2018-19 school-level immunization information as prohibited by Reg. Conn. State Agencies § 10-204a-4(c).

PLAINTIFFS,

/s/ 420948

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PROPOSED ORDER ON APPLICATION FOR TEMPORARY INJUNCTION

The plaintiffs' application and affidavit for a temporary injunction having come before the Court pursuant to an order to show cause why a temporary injunction should not issue as prayed for and the parties appeared and were fully heard;

[or]

The defendant was duly notified of the order as appears by the officer's return endorsed thereon, but the defendant failed to appear and it appearing to the court or undersigned authority that a temporary injunction ought to issue, and

That, for good cause shown the Court is of the opinion that the temporary injunction ought to issue without bond.

These are therefore, by authority of the State of Connecticut to command and enjoin you the State of Connecticut Department of Public Health and each of your officers, servants, agents, and employees to wholly and absolutely desist and refrain from continuing to make publicly available any immunization information as prohibited by Reg. Conn. State Agencies § 10-204a-4(c), and from releasing any additional immunization information as prohibited by said regulation until the return day of the writ and complaint and until further order of the court.

Dated at _____.

Judge/ Clerk/ Assistant Clerk

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ORDER OF SERVICE

I certify that a copy of the above was or will immediately be mailed or delivered electronically on this **28th**, day of August, 2019 to all counsel of record and self represented parties of record and that written consent for electronic delivery was received from all counsel and self represented parties of record who were or who will be electronically served to

Darren Cunningham, Esq.
Assistant Attorney General
Office of the Attorney General
VIA EMAIL ONLY: darren.cunningham@ct.gov

PLAINTIFFS,

/s/ 420948
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